

HOUSE BILL 3133

By Matheny

AN ACT to amend Tennessee Code Annotated, Title 45  
and Title 47, relative to foreclosure consultants.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. As used in this act, unless the context otherwise requires:

(1) "Foreclosure consultant" means a person who:

(A) Solicits or contacts a homeowner in writing, in person or through any electronic or telecommunications medium and directly or indirectly makes a representation or offer to perform any service that the person represents shall:

(i) Stop, enjoin, delay, void, set aside, annul, stay or postpone a foreclosure sale;

(ii) Obtain forbearance from any servicer, beneficiary or mortgagee;

(iii) Assist the homeowner to exercise a right of reinstatement provided in the loan documents or to refinance a loan that is in foreclosure and for which notice of foreclosure proceedings has been published;

(iv) Obtain an extension of the period within which the homeowner may reinstate the homeowner's obligation or extend the deadline to object to a ratification;

(v) Obtain a waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a residence in foreclosure or contained in the mortgage;

(vi) Assist the homeowner to obtain a loan or advance of funds;

(vii) Avoid or ameliorate the impairment of the homeowner's credit resulting from the filing of an order to docket or a petition to foreclose or the conduct of a foreclosure sale;

(viii) Save the homeowner's residence from foreclosure;

(ix) Purchase or obtain an option to purchase the homeowner's residence not more than twenty days after an advertised or docketed foreclosure sale;

(x) Arrange for the homeowner to become a lessee or renter entitled to continue to reside in the homeowner's residence;

(xi) Arrange for the homeowner to have an option to repurchase the homeowner's residence; or

(xii) Engage in any documentation, grant, conveyance, sale, lease, trust or gift by which the homeowner clogs the homeowner's equity of redemption in the homeowner's residence; or

(B) Systematically contacts owners of property that court records or newspaper advertisements show are in foreclosure or in danger of foreclosure;

(2) "Foreclosure consulting contract" means a written, oral or equitable agreement between a foreclosure consultant and a homeowner for the provision of any foreclosure consulting service or foreclosure reconveyance;

(3) "Foreclosure consulting service" means services that provide for:

(A) Receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a lien on a residence in foreclosure;

(B) Contacting creditors on behalf of a homeowner;

(C) Arranging or attempting to arrange for an extension of the period within which a homeowner may cure the homeowner's default and reinstate the homeowner's obligation;

(D) Arranging or attempting to arrange for any delay or postponement of the sale of a residence in foreclosure;

(E) Arranging or facilitating the purchase of a homeowner's equity of redemption or legal or equitable title not later than twenty (20) days after an advertised or docketed foreclosure sale;

(F) Arranging or facilitating any transaction through which a homeowner will become a lessee, optionee, life tenant, partial homeowner or vested or contingent remainderman of the homeowner's residence;

(G) Arranging or facilitating the sale of a homeowner's residence or the transfer of legal title, in any form, to another party as an alternative to foreclosure;

(H) Arranging for a homeowner to have an option to repurchase the homeowner's residence after a sale or transfer;

(I) Arranging for or facilitating a homeowner remaining in the homeowner's residence as a tenant, renter or lessee; or

(J) Arranging or facilitating any other grant, conveyance, sale, lease, trust or gift by which a homeowner clogs the homeowner's equity of redemption in the homeowner's residence;

(4) "Foreclosure purchaser" means a person who acquires title or possession of a deed or other document to a residence in foreclosure as a result of a foreclosure reconveyance;

(5) "Foreclosure reconveyance" means a transaction involving:

(A) The transfer of title to real property by a homeowner during or incident to a proposed foreclosure proceeding, either by transfer of interest from the homeowner to another party or by creation of a mortgage, trust or other lien or encumbrance during the foreclosure process that allows the acquirer to obtain legal or equitable title to all or part of the property; and

(B) The subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the homeowner by the acquirer or a person acting in participation with the acquirer that allows the homeowner to possess the real property following the completion of the foreclosure proceeding, including an interest in a contract for deed, purchase agreement, land installment sale, contract for sale, option to purchase, lease, trust or other contractual arrangement;

(6) "Foreclosure surplus acquisition" means a transaction involving the transfer, sale or assignment of the surplus remaining and due the homeowner based on the audit account during a foreclosure proceeding;

(7) "Foreclosure surplus purchaser" means a person who acts as the acquirer by assignment, purchase, grant or conveyance of the surplus resulting from a foreclosure sale and includes a person who acts in joint venture or joint enterprise with one (1) or more acquirers;

(8) "Homeowner" means the record owner of a residence in foreclosure; and

(9) "Residence in foreclosure" means residential real property consisting of not more than four (4) single-family dwelling units, one of which is occupied by the owner as the individual's principal place of residence, and against which an order to docket or a petition to foreclose has been filed.

## SECTION 2.

(a) Except as provided in subsection (b), this section and Sections 3 to 8 of this act shall not apply to:

(1) An individual admitted to practice law in the state, while performing any activity related to the individual's regular practice of law;

(2) A person who holds or is owed an obligation secured by a lien on any residence in foreclosure while the person performs services in connection with the obligation or lien, if the obligation or lien did not arise as a result of a foreclosure reconveyance;

(3) A person doing business under any law of this state or the United States regulating banks, trust companies, savings and loan associations, credit unions or insurance companies, while the person performs services as a part of the person's normal business activities;

(4) Any subsidiary, affiliate or agent of such person, while the subsidiary, affiliate or agent performs services as a part of the subsidiary's, affiliate's or agent's normal business activities;

(5) A judgment creditor of the homeowner, if the judgment creditor's claim accrued before the written notice of foreclosure sale is sent;

(6) A title insurer authorized to conduct business in the state, while performing title insurance and settlement services;

(7) A title insurance producer licensed in the state, while performing services in accordance with such person's license;

(8) A person licensed as a mortgage broker or mortgage lender under state law, while acting under the authority of such license;

(9) A person licensed as a real estate broker, associate real estate broker or real estate salesperson under state law while such person engages in

any activity for which the person is licensed as long as any conveyance or transfer of deed, title or establishment of equitable interest is done through a settlement, as defined in Section 6 (a)(5) of this act; or

(10) A nonprofit organization that solely offers counseling or advice to homeowners in foreclosure or loan default, if the organization is not directly or indirectly related to and does not contract for services with for-profit lenders or foreclosure purchasers.

(b) Sections 2 to 8 of this act shall not apply to a person who is functioning in a position listed under subsection (a) or is engaging in activities or providing services designed or intended to transfer title to a residence in foreclosure directly or indirectly to that individual, or an agent or affiliate of that individual.

### SECTION 3.

(a) A foreclosure consulting contract shall:

- (1) Be provided to the homeowner for review before signing;
- (2) Be printed in at least twelve-point type and written in the same language that is used by the homeowner and was used in discussions with the foreclosure consultant to describe the consultant's services or to negotiate the contract;
- (3) Fully disclose the exact nature of the foreclosure consulting services to be provided, including any foreclosure reconveyance that may be involved and the total amount and terms of any compensation to be received by the foreclosure consultant or anyone working in association with the consultant;
- (4) Be dated and personally signed by the homeowner and the foreclosure consultant and be witnessed and acknowledged by a notary public appointed and commissioned by the state; and

(5) Contain the following notice, printed in at least fourteen-point boldface type, completed with the name of the foreclosure consultant and located in immediate proximity to the space reserved for the homeowner's signature:

**"NOTICE REQUIRED BY TENNESSEE LAW**

....(Name) or anyone working for him or her CANNOT ask you to sign or have you sign any lien, mortgage or deed as part of signing this agreement unless the terms of the transfer are specified in this document and you are given a separate explanation of the precise nature of the transaction.

....(Name) or anyone working for him or her CANNOT guarantee you that they will be able to refinance your home or arrange for you to keep your home. Continue making mortgage payments until a refinancing, if applicable, is approved.

If a transfer of the deed or title to your property is involved in any way, you may rescind the transfer any time not later than three days after the date you sign the deed or other document of sale or transfer. See the attached Notice of Rescission form for an explanation of this right. As part of any rescission, you must repay, within sixty (60) days, any money spent on your behalf as a result of this agreement, along with interest calculated at the rate of eight percent (8%) per year.

THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF YOUR HOME. CONTACT AN ATTORNEY BEFORE SIGNING."

(b) The contract shall contain on the first page, in at least twelve-point type size, the name and address of the foreclosure consultant to which the notice of cancellation is to be mailed and the date the homeowner signed the contract.

(c) The contract shall be accompanied by a completed form in duplicate, captioned "NOTICE OF RESCISSION". Such notice shall be on a separate sheet of paper attached to the contract and be detachable and shall contain the following statement printed in at least fifteen-point type:

NOTICE OF RESCISSION

(Date of Contract)

You may cancel or rescind this contract, without any penalty, at any time.

If you want to end this contract, mail or deliver a signed and dated copy of this Notice of Rescission, or any other written notice indicating your intent to rescind to ...(name of foreclosure consultant) at ...(address of foreclosure consultant, including facsimile and electronic mail).

As part of any rescission, you (the homeowner) must repay any money spent on your behalf as a result of this agreement, within sixty (60) days, along with interest calculated at the rate of eight percent (8%) per year.



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NOTICE OF RECESSION

TO: (name of foreclosure consultant)

(address of foreclosure consultant, including facsimile and electronic mail)

I hereby rescind this contract.

....(Date)

....(Homeowner's signature).

(d) The foreclosure consultant shall provide the homeowner with a signed and dated copy of the contract and the attached Notice of Rescission immediately upon execution of the contract.

(e) The time during which the homeowner may rescind the contract shall not begin to run until the foreclosure consultant has complied with this section.

(f) Any provision in a foreclosure consulting contract that attempts or purports to waive any of the rights specified in Sections 2 to 8 of this act, consent to jurisdiction for litigation or choice of law in a state other than this state, consent to venue in a county other than the county in which the property is located or impose any costs or filing fees greater than the fees required to file an action in a circuit court, is void.

SECTION 4. No foreclosure consultant may:

(1) Claim, demand, charge, collect or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented that the foreclosure consultant would perform;

(2) Claim, demand, charge, collect or receive any interest or any other compensation for any loan that the foreclosure consultant makes to the homeowner that exceeds eight percent (8%) per year;

(3) Take any wage assignment, any lien of any type on real or personal property or other security to secure the payment of compensation;

(4) Receive any consideration from any third party in connection with foreclosure consulting services provided to a homeowner unless the consideration is first fully disclosed, in writing, to the homeowner;

(5) Acquire any interest, directly or indirectly, or by means of a subsidiary, affiliate or corporation in which the foreclosure consultant or a member of the foreclosure consultant's immediate family is a primary stockholder, in a residence in foreclosure from a homeowner with whom the foreclosure consultant has contracted;

(6) Take any power of attorney from a homeowner for any purpose, except to inspect documents as provided by law; or

(7) Induce or attempt to induce any homeowner to enter into a foreclosure consulting contract that does not comply in all respects with this subtitle.

#### SECTION 5.

(a) If a foreclosure reconveyance is included in a foreclosure consulting contract or arranged after the execution of a foreclosure consulting contract, the foreclosure purchaser shall provide the homeowner with a document entitled "NOTICE OF TRANSFER OF DEED OR TITLE". Such document shall be dated and personally signed by the homeowner and the foreclosure purchaser and witnessed and acknowledged by a notary public appointed and commissioned by the state.

(b) The document required under subsection (a) shall:

(1) Contain the entire agreement of the parties;

(2) Be printed in twelve-point type and written in the same language that is used by the homeowner and was used in discussions to describe the foreclosure consultant's or foreclosure purchaser's services or to negotiate the transfer or sale of the property;

(3) Describe in detail the terms of any foreclosure conveyance and shall include:

(A) The name, business address, telephone number and facsimile number of the person to whom the deed or title will be transferred;

(B) The address of the residence in foreclosure;

(C) The total consideration to be given by the foreclosure purchaser, the foreclosure consultant and any other party as a result of the transfer;

(D) The time at which title is to be transferred to the foreclosure purchaser and the terms of any conveyance;

(E) Any financial or legal obligations that the homeowner may remain subject to, including a description of any mortgages, liens or other obligations that will remain in place;

(F) A description of any services of any nature that the foreclosure purchaser will perform for the homeowner before or after the sale or transfer;

(G) A complete description of the terms of any related agreement designed to allow the homeowner to remain in the home, including the terms of any rental agreement, repurchase agreement, contract for deed,

land installment contract or option to buy and any provisions for eviction or removal of the homeowner in the case of late payment; and

(H) The process for calculation of any repurchase price or fee associated with any transfer of title or deed back to the homeowner; and

(4) Contain the following statement printed in at least fourteen-point boldface type and located in immediate proximity to the space reserved for the homeowner's signature:

If you change your mind about transferring ownership of your property, you, the homeowner, may rescind the transfer of deed or title to your property any time within the next three (3) days. As part of any rescissions, you must repay, within sixty (60) days, any money spent on your behalf as a result of this agreement, along with interest calculated at the rate of eight percent (8%) per year.

THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD  
RESULT IN THE LOSS OF YOUR HOME. CONTACT AN ATTORNEY  
BEFORE SIGNING.

(c)

(1) If a foreclosure reconveyance is included in a foreclosure consulting contract or arranged after the execution of a foreclosure consulting contract, the foreclosure purchaser shall provide the homeowner with a document entitled "NOTICE OF RIGHT TO CANCEL TRANSFER OF DEED OR TITLE".

(2) The document required under subdivision (a)(1) shall be a separate document and not printed on the back of any other document and contain the following statement printed in at least twelve-point type:

"NOTICE OF RIGHT TO CANCEL TRANSFER OF DEED OR  
TITLE

.... (Date)

You may cancel or rescind the transfer of ownership of your property through the transfer of a deed or title not later than three (3) business days after the date you sign this document.

To rescind this transaction, mail or deliver a signed and dated copy of this notice, or any other written notice expressing a similar intent to (name of foreclosure consultant) at (address of foreclosure consultant, including facsimile and electronic mail).

As part of any rescission, you (the homeowner) must repay any money spent on your behalf as a result of this agreement, within sixty (60) days, along with interest calculated at the rate of eight percent (8%) per year.

THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD  
RESULT IN THE LOSS OF YOUR HOME. CONTACT AN  
ATTORNEY BEFORE SIGNING.

NOTICE OF RESCISSION

TO: .... (name of foreclosure consultant)

.... (address of foreclosure consultant, including facsimile and electronic mail)

I hereby rescind the transfer of deed or title to my property. Please return all executed documents to me.

.... (Date)

.... (Homeowner's signature)".

(d) The foreclosure purchaser shall provide the homeowner with a copy of the Notice of Right to Cancel Transfer of Deed or Title immediately on execution of any document that includes a foreclosure reconveyance.

(e) The time during which the homeowner may rescind the contract or transfer shall not begin to run until the foreclosure purchaser has complied with this section.

(f) Any provision in a foreclosure consulting contract or other agreement concerning a foreclosure reconveyance that attempts or purports to waive the homeowner's rights under this section, consent to jurisdiction for litigation or choice of law in a state other than this state, consent to venue in a county other than the county in which the property is located or impose any costs or filing fees greater than the fees required to file an action in a circuit court, is void.

(g) A foreclosure reconveyance may not be carried out using a power of attorney from the homeowner.

(h) A notice of rescission is not required to be in the particular form specified in this section or any form contained in any agreement with the foreclosure consultant or foreclosure purchaser and is effective, however expressed, if such notice indicates the intention of the homeowner to rescind the reconveyance agreement.

(i) The right to rescind may not be conditioned on the repayment of any funds.

(j) Not later than ten (10) days after receipt of a notice of rescission given in accordance with this section, the foreclosure purchaser shall return, without condition, any original deed, title, contract and any other document signed by the homeowner.

(k) During the rescission period, no deed or other document affecting title to the residence of the homeowner may be recorded.

#### SECTION 6.

(a) As used in this section, unless the context otherwise requires:

(1) "Primary housing expenses" means the total amount required to pay regular principal, interest, rent, utilities, hazard insurance, real estate taxes and association dues on a property;

(2) "Resale" means a bona fide market sale of property subject to a foreclosure reconveyance by the foreclosure purchaser to an unaffiliated third party;

(3) "Resale price" means the gross sale price of a property on resale; and

(4) "Settlement" means an in-person, face-to-face meeting with the homeowner to complete final documents incident to the sale or transfer of real property, or the creation of a mortgage or equitable interest in real property, conducted by a settlement agent who is not employed by or an affiliate of the foreclosure purchaser, during which the homeowner must be presented with a completed copy of the HUD 1 Settlement Form.

(b) No foreclosure purchaser may:

(1) Enter into, or attempt to enter into, a foreclosure reconveyance with a homeowner unless:

(A) The foreclosure purchaser verifies and can demonstrate that the homeowner has or will have a reasonable ability to pay for the subsequent reconveyance of the property back to the homeowner on completion of the terms of a foreclosure conveyance, or, if the foreclosure

conveyance provides for a lease with an option to repurchase the property, the homeowner has or will have a reasonable ability to make the lease payments and repurchase the property within the term of the option to repurchase;

(B) The foreclosure purchaser and the homeowner complete a formal settlement before any transfer of an interest in the property is effected; and

(C) The foreclosure purchaser complies with the requirements of the federal Home Ownership Equity Protection Act, 15 USC §1639, and its implementing regulations for any foreclosure reconveyance in which the homeowner obtains a vendee interest in a contract for deed;

(2) Fail to:

(A) Ensure that title to the property has been reconveyed to the homeowner in a timely manner if this subtitle or the terms of a foreclosure reconveyance agreement require a reconveyance; or

(B) Make payment to the homeowner not later than ninety (90) days after any resale of the property so that the homeowner receives cash payments or consideration in an amount equal to at least eighty-two percent (82%) of the net proceeds from any resale of the property should a property subject to a foreclosure reconveyance be sold not later than eighteen (18) months after entering into a foreclosure reconveyance agreement;

(3) Enter into repurchase or lease terms as part of the foreclosure conveyance that are unfair or commercially unreasonable or engage in any other unfair conduct;



(4) Represent, directly or indirectly, that the foreclosure purchaser:

(A) Is acting as an advisor or a consultant or in any other manner represent that the foreclosure purchaser is acting on behalf of the homeowner;

(B) Has certification or licensure that the foreclosure purchaser does not have;

(C) Is assisting the homeowner to "save the house" or use a substantially similar phrase; or

(D) Is assisting the homeowner in preventing a foreclosure if the result of the transaction is that the homeowner will not complete a redemption of the property;

(5) Make any other statements, directly or by implication, or engage in any other conduct that is false, deceptive or misleading, or that has the likelihood to cause confusion or misunderstanding, including statements regarding the value of the residence in foreclosure, the amount of proceeds the homeowner will receive after a foreclosure sale, any contract term or the homeowner's rights or obligations incident to or arising out of the foreclosure reconveyance; or

(6) Until the homeowner's right to rescind or cancel the transaction has expired:

(A) Record any document, including an instrument of conveyance, signed by the homeowner; or

(B) Transfer or encumber or purport to transfer or encumber any interest in the residence in foreclosure to any third party.

(c) For purposes of subdivision (b)(1), there is a rebuttable presumption that:

(1) A homeowner has a reasonable ability to pay for a subsequent reconveyance of the property if the homeowner's payments for primary housing expenses and regular principal and interest payments on other personal debt, on a monthly basis, do not exceed sixty percent (60%) of the homeowner's monthly gross income; and

(2) The foreclosure purchaser has not verified reasonable payment ability if the foreclosure purchaser has not obtained documents other than a statement by the homeowner of assets, liabilities and income.

(d)

(1) The foreclosure purchaser shall make a detailed accounting of the basis for the amount of a payment made to the homeowner of a property resold not more than eighteen (18) months after entering into a foreclosure reconveyance agreement, in accordance with subdivision (b)(2)(B).

(2) The accounting shall be on a form prescribed by the attorney general, in consultation with the commissioner of financial institutions, and shall include detailed documentation of expenses and other consideration paid by the foreclosure purchaser and deducted from the resale price.

(e) A bona fide purchaser for value or bona fide lender for value who enters into a transaction with a homeowner or a foreclosure purchaser when a foreclosure consulting contract is in effect or during the period when a foreclosure reconveyance may be rescinded, without notice of those facts, receives good title to the property, free and clear of the right of the parties to the foreclosure consulting contract or the right of the homeowner to rescind the foreclosure reconveyance.

(f) This section shall not be construed to impose any duty on a purchaser, title insurer or title insurance producer with respect to the application of the proceeds of a sale of property by a foreclosure purchaser.

#### SECTION 7.

(a) Each foreclosure surplus acquisition shall be in the form of a written contract.

(b) Each foreclosure surplus acquisition contract shall:

(1) Contain the entire agreement of the parties;

(2) Be printed in at least twelve-point type, in the same language that is used by the homeowner and was used by the foreclosure surplus purchaser and the homeowner to negotiate the sale of the residence in foreclosure;

(3) Be fully completed, dated and personally signed by the homeowner and the foreclosure surplus purchaser before the statement of account has been referred to the auditor; and

(4) Include the following:

(A) The name, business address and telephone number of the foreclosure surplus purchaser;

(B) The address of the residence in foreclosure;

(C) The total consideration to be given by the foreclosure surplus purchaser in connection with or incident to the transaction;

(D) A complete description of the terms of payment or other consideration, including any services of any nature that the foreclosure surplus purchaser represents the foreclosure surplus purchaser will perform for the homeowner before or after the sale; and

(E) The following notice, which shall be printed in at least fourteen-point boldface type, completed with the name of the foreclosure

surplus purchaser located in immediate proximity to the space reserved for the homeowner's signature:

"NOTICE REQUIRED BY TENNESSEE LAW

If you have any questions about this document, seek legal counsel before signing. This is an important legal contract. Failure to read and understand these documents may cause you to lose valuable rights.

The effect of these documents is that you may lose the equity in your home. This agreement will not stop the foreclosure or get your house back. If you believe the foreclosure sale was improper, you should immediately seek legal advice to determine what objections to ratification or to rescind the order of ratification may be filed.

You may rescind this contract for the sale of your house without any penalty or obligation at any time not later than ten (10) days after the auditor states the account of the foreclosure sale. See the attached Notice of Rescission form for an explanation of this right. As part of the rescission, you must repay from the surplus proceeds any consideration received, directly or indirectly, together with an amount for interest calculated at the rate of eight percent (8%) per year."

(c)

(1) The contract shall be accompanied by a completed form in duplicate, captioned "Notice of Rescission".

(2) The Notice of Rescission shall:

(A) Be on a separate sheet of paper attached to the contract;

(B) Be easily detachable; and

(C) Contain the following statement printed in at least fifteen-point type:

"NOTICE OF RESCISSION

.... (Date of contract)

You may rescind this contract for the sale of your house at any time not later than ten (10) days after the auditor states the account of the foreclosure sale.

To cancel this transaction, mail or deliver a signed and dated copy of this Notice of Rescission to .... (name of purchaser) at .... (address of purchaser, including facsimile and electronic mail) with a copy to the court appointed auditor.

I hereby rescind this transaction.

.... (Date)

.... (Homeowner's signature)".

(d) The foreclosure surplus purchaser shall provide the homeowner with a copy of the contract and the attached Notice of Rescission at the time the contract is executed by all parties.

(e) The contract required pursuant to this section survives delivery of any instrument of conveyance of the residence in foreclosure, is binding in the audit and has no effect on persons other than the parties to the contract.

(f) Any provision in a contract that attempts or purports to waive any of the rights specified in Sections 3 to 8 of this act, consent to jurisdiction or choice of law in a state other than this state, consent to venue in a municipality other than the municipality in which the property is located or impose any costs or filing fees greater than the fees required to file an action in a circuit court, is void.

#### SECTION 8.

(a) In addition to any other right of rescission, a homeowner has the right to rescind any contract with a foreclosure surplus purchaser at any time not later than ten (10) days after the statement of audit account of the foreclosure sale.

(b)

(1) Rescission occurs when the homeowner delivers, by any means, written notice of rescission to the address specified in the contract, with a copy to the auditor. As part of the rescission, the homeowner shall repay any consideration received directly or indirectly, together with interest calculated.

(2) On receipt of the notice of rescission, the auditor shall restate the account. The repayment of consideration and interest by the homeowner shall be incorporated by the auditor into the revised statement of account filed with the court.

(3) Upon ratification of the amended audit, the attorney named in the mortgage, mortgage assignee for purposes of foreclosure, trustee or substitute trustee in making distribution of the surplus funds shall comply with the revised court-approved audit.

(c) A notice of rescission given by a homeowner need not be in the form provided with the contract and is effective, however expressed, if it indicates the intention of the homeowner to rescind the contract.

(d) The right to rescind may not be conditioned on the repayment of any funds.

(e) Not later than ten (10) days after receipt of a notice of rescissions given in accordance with this section, the foreclosure surplus purchaser shall return, without condition, the original contract and all other documents signed by the homeowner.

#### SECTION 9.

(a) The attorney general and reporter may seek an injunction to prohibit a person who has engaged or is engaging in a violation of Sections 2 to 8 of this act from engaging or continuing to engage in the violation.

(b) The court may enter any order or judgment necessary to:

(1) Prevent the use by a person of any prohibited practice;

(2) Restore to a person any money or real or personal property acquired from the person by means of any prohibited practice; or

(3) Appoint a receiver in case of willful violation of Sections 2 to 8 of this act.

(c) In any action brought by the attorney general under this section, the attorney general and reporter may recover the costs of the action on behalf of the state.

SECTION 10. This act shall take effect October 1, 2008, the public welfare requiring it.